



JSRP Paper 5

Theories in Practice Series

COMMUNITY MEDIATION AND SOCIAL HARMONY IN NEPAL

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Theories of Change in Practice

The Justice and Security Research Programme and The Asia Foundation are currently collaborating on a research project exploring Theory of Change approaches to international development practice. The project was launched in April 2012 and involves staff from both organisations. The research and outputs from the collaboration aim to provide a basis for development organisations to produce more empirically-grounded theories of how change happens, leading to improved development programming. Overall, this collaboration between a research consortium and an NGO hopes to cultivate better exchange between wider social science research findings and the specific knowledge generated by field practice.

Acronyms

ADR

Alternative Dispute Resolution

CBO

Community-Based Organisation

DFID

United Kingdom Department for International Development

DFID-ESP

Department for International Development-Enabling State Programme

JICA

Japanese International Cooperation Agency

JSRP

Justice and Security Research Programme

LSGA

Local Self-Government Act

NGO

Non-Governmental Organisation

TAF, the Foundation

The Asia Foundation

UN

United Nations

UNDP

United Nations Development Program

USAID

United States Agency for International Development

VDC

Village Development Committee

Executive Summary

Scope and purpose

- This paper focuses on one element of the Theory of Change for The Asia Foundation-supported community mediation programme in Nepal: the link between the programme and improved social harmony.
- The paper does not attempt to prove a causal link between mediation boards and social harmony. It rather identifies three possible pathways through which this link could be achieved: dispute resolution and prevention, relationship building and empowerment.
- The paper also provides reflections on the use of Theory of Change in development practice and as a tool for academic research.

Methodology

- This work is based on three months of research in Nepal, preceded by a desk review of literature on the use of Theory of Change in international development.
- It is supported by a review of interdisciplinary academic and practitioner material on community mediation, as well as by the Foundation's programme documents and evaluations.
- Primary research included semi-structured interviews with Foundation and implementing partner staff in Kathmandu. Interviews and focus group discussions were also conducted in 15 Village Development Committees (VDC) and municipalities across six Mid-West and Far-West Terai and Hill Districts.

Key findings

- 'Social harmony' is often used in mediation and development programming in Nepal, though is often undefined.
- The current evidence base for the social harmony claim shows positive outcomes at the individual level. There are a number of gaps in evidence needed to substantiate the programme's community-level outcomes.
- There is strong evidence related to community mediation's ability to resolve disputes and some indication that doing so may help prevent disputes from escalating and recurring.
- Mediation's ability to build interpersonal relationships is well substantiated, but there is weaker evidence of its ability to build intergroup relationships.
- There is good evidence that mediation empowers mediators of marginalised groups, but less evidence regarding the effect of such empowerment on broader social harmony.
- Despite mixed evidence linking mediation to social harmony, this community mediation is compared positively to many formal and traditional justice providers in Nepal.

Implications for further research and policy

- Community mediation is generally viewed positively by its users, but long-term case tracking and in-depth engagement with target communities will allow the Foundation to better substantiate and refine its Theory of Change.
- Greater clarity for donors and practitioners is needed regarding the purpose, role of evidence and level of expected impact of a Theory of Change.
- A grounded Theory of Change can serve as a useful entry point for academic programme research, but an aspirational Theory of Change may be less useful.

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1. Introduction: Theory of Change for Community Mediation

Theories of Change are the latest in a series of efforts by the development community to improve development effectiveness.¹ A ‘Theory of Change’ is generally understood as a ‘theory of how and why an initiative is intended to work’ and can be used for learning about, planning for, describing, and evaluating social programmes.² Though some practitioners use Theories of Change as a planning tool that takes the form of a diagram or series of statements, others use Theory of Change as a way to communicate their programmes and processes to donors and partners. In this looser usage, Theory of Change constitutes a comprehensive approach to thinking about ‘how change happens’ in particular contexts or sectors based on a programme’s context and supporting evidence. Notwithstanding ongoing debates regarding Theory of Change best practice among donors and practitioners, the potential of this approach to build rigorous theories that are grounded in practice has made it a key component of evidence-based policy.³

Despite these constructive aspirations, Theory of Change is not without critics. Indeed, some argue that Theory of Change is simply another development ‘buzzword’,⁴ and prone to the same linear oversimplification that plagues logical frameworks. Additionally, in the international development sector, creating a Theory of Change is quickly becoming a requirement for donor funding. Though a Theory of Change is intended to be used actively and revised over the course of a project, this requirement may predispose it to becoming another form of ‘box ticking’ that is shelved once a programme is funded and seldom revisited. Incorporating Theory of Change into donor requirements may also remove a theory from programme realities by incentivising organisations to exaggerate programme claims or set unrealistic goals. These downsides do not discredit the potential benefits of using a Theory of Change, but rather indicate that more investigation is needed into how Theory of Change is actually used in a programme context.

With both the goals and critiques of Theory of Change in mind, this paper will use the outcomes, processes and logic outlined in an existing Theory of Change to analyse The Asia Foundation’s (henceforth the Foundation) community mediation programming in Nepal. This paper will adopt an approach consistent with the wider goals of Theory of Change, as it seeks to examine one element of an existing theory. In so doing, it will examine its underlying logic and compare its expectations with reality, with the goal of developing a more empirically-grounded understanding of the change process. Within this analysis, the origin of

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¹ Anderson, A. (2004) *Theory of Change as a Tool for Strategic Planning: A Report on Early Experiences*. The Aspen Institute: Round Table on Community Change, p.2. This paper focuses on the use of Theories of Change for development programming. However, Theories of Change are also used across a wide variety of fields including health, education and social work.

² Weiss, C.H. (1995). ‘Nothing as Practical as Good Theory: Exploring Theory-Based Evaluation for Comprehensive Community Initiatives for Children and Families’ in J. Connell, A. Kubisch, L. Schorr and C. Weiss (Eds.) *New Approaches to Evaluating Community Initiatives: Concepts, Methods and Contexts*. New York: Aspen Institute (65-92)

³ Stein, D. and Valters, C. (2012). ‘Theory of Change in International Development: A Review of Existing Knowledge’. *JSRP Paper 1*, London: Justice and Security Research Programme and The Asia Foundation.

⁴ James, C. (2011). *Theory of Change Review: A report commissioned by Comic Relief*. London, p. 4.

programming ideas as well as conflicting forms of power surrounding the programme are particularly important. This paper represents a first step in using Theory of Change as an entry point for programme research, and was written in collaboration with parallel exploration of Foundation-supported community mediation in Sri Lanka.⁵

Though Foundation-supported community mediation in Nepal is primarily an access-to-justice programme, over time, Foundation staff and local partners have come to view mediation as a catalyst for a number of positive communal changes. With the benefit of over ten years of programme history, the Foundation recently developed an explicit Theory of Change to outline the changes intended to result from community mediation and the mechanisms by which such changes may occur. This theory takes into account evidence from past Foundation research as well as a number of unforeseen changes that programme staff have observed. Together, these expected changes take the form of three primary outcomes:⁶

1. **Access to Justice:** ‘By supporting the expansion of mediation services in rural Nepal, there will be a steady improvement in access to justice for local communities’.

Improving access to justice is the foundational claim of community mediation in Nepal. This is premised on providing accessible justice services, and is thus also the most concrete and short term claim in the Theory of Change. The following points build on this initial claim.

2. **Social Harmony:** ‘It is expected that the provision of community mediation services will contribute to improvements in social harmony at the local level’.

Framing mediation as a tool to promote social harmony implies that the broader community surrounding each programme is expected to benefit. This longer-term, high-level goal encompasses a number of positive potential outcomes of mediation – including resolved disputes and improved coexistence, improved relationships and empowerment – and over time has become a key aim of the Foundation’s community mediation programme. Social harmony is also a commonly identified goal by other NGOs in Nepal, though those using the term differ widely in how they understand it. Investigating the connection between community mediation and social harmony claim is the focus of this paper.

3. **State-Society Relations:** ‘In the longer term and more indirectly, it is expected that by improving the level of engagement between local governance actors – particularly the VDC, mediators and host communities – the expanded mediation program will contribute to broader peace building efforts. This is expected to enhance an important state function through local collective action, and thereby gradually improve state-society relations’.⁷

Academics and practitioners differ on their understanding of ‘state-society relations’, though like ‘social harmony’, this too constitutes a high-level goal. DFID has begun to ground much

5 Valters, C. (2013). ‘Community Mediation and Social Harmony in Sri Lanka’, *JSRP Paper 4, Theories in Practice series*, London: JSRP and The Asia Foundation.

⁶The Asia Foundation (2012a). Programme Components Reports, DfID PPA Year 1. Internal document, on file with author.

⁷ Although fully analysing the connection between community mediation and state-society relations is beyond the scope of this paper, considering the broader evidence base for the theory may help inform future enquiries into this connection.

of its programming in this concept, defining it as ‘interactions between state institutions and societal groups’ that are essential to ‘effective states and durable, positive peace’.⁸ Primary research indicates that the Foundation understands this concept largely in terms of increasing the presence and efficacy of formal government in Nepal. Promoting more positive interactions between citizens and government representatives is also considered to contribute to this goal.

Investigating Social Harmony

Based on the second claim in the Theory of Change, this paper aims to evaluate the connection between Foundation-supported community mediation and ‘social harmony’. As fully reviewing each aspect of the above Theory of Change is beyond the scope of this project, this focus was chosen by Foundation staff,⁹ who indicated an interest in further exploring this element of their Theory of Change. The term ‘social harmony’ appears commonly in development and practitioner literature, though is often vague. Research on social harmony outside Nepal often examines a Chinese policy to promote ‘social harmony’. With reference to this policy, Ho and Chan find that, ‘there is no consensus on the meaning of social harmony in the literature’ and note that it ‘involves some very subjective elements and cannot solely be assessed by one objective indicator’.¹⁰

With specific reference to Nepal, academics, activists, journalists and development practitioners often use the term ‘social harmony’ to describe aspirations for Nepalese society. With the central government nearing collapse, in May 2012, ‘social harmony’ rallies in eastern Nepal called for the promulgation of a new constitution, an end to general strikes and peace.¹¹ Additionally, politicians, newspaper editors, Nepalese bloggers and organisations use this term to describe general social accord¹² or ‘unity in diversity’.¹³ Many Nepalese and international development organisations also use this term as shorthand for coexistence, social justice and peace.

The concept of harmony is also prominent in the discourse surrounding community mediation. Proponents of mediation see this term as encompassing values of cooperation central to mediation. However, mediation’s critics consider emphasising harmony to be a way of privileging majority views at the expense of the minority, manifested in what Nader calls

8 DFID. (2010). *Building Peaceful States and Societies: A DFID Practice Paper*. London

⁹ This occurred prior to the inception of the project at a June 2012 workshop in London.

¹⁰ Phillips and Berman (2001); Walker and van der Maesen (2003), quoted in Ho and Chan (2007).

¹¹ <http://www.thehimalayantimes.com/fullNews.php?headline=Rallies+in+east+call+for+social+harmony+&NewsID=333663>;

¹² Upreti and Möler-Böker (2010); Backward Society Education <http://proxied.changemakers.net/journal/300506/displayethics.cfm-ID=92>; Caritas evaluation ([http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/2A94D6B8EE09F569C12577600283DA6/\\$file/Caritas+Nepal+Monitoring+Report.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/2A94D6B8EE09F569C12577600283DA6/$file/Caritas+Nepal+Monitoring+Report.pdf)); Adhikani (2010), in Upreti and Möler-Böker (Eds.); <http://www.ekantipur.com/the-kathmandu-post/2012/06/18/nation/uml-bid-to-forge-broader-alliance-against-maoists/236175.html>; See also Organisation Information on Partnership for Development Forum, Campaign for Human Rights, and Social Transformation in Nepal, Pro-Poor Agriculture Policy Network Nepal, Caritas Nepal

¹³ See Organisation Information on Heifer International Nepal

‘coercive harmony’.¹⁴ Davidheiser contends that ‘harmony ideology’ promotes both such outcomes in mediation, as it ‘maintain[s] inequality, but also provide[s] a means by which disputants can seek redress and enact change’.¹⁵ Additionally, Wall notes that mediators from ‘collectivist societies’ are much more likely to stress values of harmony and highlight the cost of disputes to society during mediation.¹⁶ Harmony is also a central Confucian value, and is prioritised in community mediation in China, South Korea and Singapore.¹⁷

In addition, the term ‘social harmony’ is also widely used in discussions of local justice and community mediation in Nepal. Analysing local power structures, Ramirez highlights that ideal-type authority figures are often viewed by society as benevolently resolving disputes and, in so doing, promoting social harmony.¹⁸ Similarly, Upreti notes that Nepal’s ‘rich historical tradition of dispute settlement’ is a result of the ‘desire for social harmony and coexistence’.¹⁹ Perhaps building on this tradition, the majority of organisations supporting community mediation in Nepal, including the Foundation as well as DFID-ESP, USAID, and JICA, UNDP, cite promoting social harmony as either a goal or outcome of their programming.²⁰ These organisations also use the term ‘social harmony’ in a variety of ways, most notably in terms of peacebuilding, dispute resolution and cooperation.

Foundation understanding of social harmony in the context of community mediation is as vague as many of these other definitions. In this case, the Foundation conceptualises social harmony as a state of ‘co-existence, fairness, equal participation, and inclusion’.²¹ Previous Foundation research found that disputants understood social harmony as the ‘relational values of cooperation and respect’.²² The Theory of Change alludes to creating harmony between ‘groups with historic tensions’, though does not further specify targeting caste, class, ethnic or gender groups. Though conceiving of social harmony in this nebulous way may seek to evoke wider, positive effects community mediation may have in society, this may also be problematic both from a research standpoint as well as from the point of view of building a rigorous Theory of Change. Exploring how social harmony relates to mediation suggests a need to clarify this term, its components and the processes intended to support it.

¹⁴ For further discussion on this point, see Nader, L. (1997). ‘Controlling Processes: Tracing the Dynamic Components of Power’. *Current Anthropology*, 38(5), p719.; Nader, L. (1993). Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology. *The Ohio State Journal on Dispute Resolution*, 9(1), pp.1-27.

¹⁵ Davidheiser, M. (2006). ‘Harmony, Peacemaking and Power: Controlling Processes in African Mediation’. *Conflict Resolution Quarterly*, 23(3), p281.

¹⁶ Wall, J. A., and Dunne, T. C. (2012). ‘Mediation Research: A Current Review’. *Negotiation Journal*, 28(2), pp.217-244.. See also, Wall, J. A., Wu, S., & Beriker, N. (2010). ‘Turkish Community Mediation’, *Journal of Applied Social Psychology*, 40(8), pp.2019-2042

¹⁷ Wall, J. A. (1993). Community Mediation in China and Korea: Some Similarities and Differences. *Negotiation Journal*, (April), 141-153.; Wall, J. A., Wu, S., & Beriker, N. (2010). ‘Turkish Community Mediation’, *Journal of Applied Social Psychology*, 40(8), pp.2019-2042.; Wall, J. A., & Blum, M. (1991). Community Mediation in the People’s Republic of China. *The Journal of Conflict Resolution*, 35(1), pp.3-20.

¹⁸ Ramirez, P. (2000). *De la disparition des chefs: une anthropologie politique népalaise*. Monde Indien Sciences Sociales 15e and 16e siècle. Paris: CRNS editions, 265.

¹⁹ Upreti (2010:151)

²⁰ See, bibliography for Organisation Information on USAID, JICA and DFID-ESP

²¹ TAF (2012a)

²² Ibid.

Structure of the Paper

Overall, this paper aims to investigate how change happens - or why it doesn't happen as expected - with reference to community mediation and social harmony. Though commonly used in reference to justice in Nepal, the vague definition of social harmony suggests that examining the term itself will be the first step to refining community mediation's Theory of Change. Given that the Theory of Change approach emphasises the need to embed programmes in their history, operational context and supporting evidence, this paper will adopt the same approach when considering social harmony.

Following a discussion of methods and case study profiles, this paper begins by introducing the Foundation's community mediation programming and situating it within Nepal's recent history and experience with justice. The second section traces the evolution of Foundation-supported community mediation in order to identify the origins of its social harmony claims. This will analyse the relationship between Theories of Change and programming and further highlight the importance of examining the meaning of social harmony. This examination begins in section four, which identifies three common understandings of social harmony identified through primary research: resolution of disputes, repaired relationships, and enhanced social inclusion. Using primary research, academic literature and practitioner documents, this section will clarify the meaning of each understanding of 'social harmony' and assess the relevance of each to the Nepalese context. Rather than attempting to prove that community mediation is contributing to one form of social harmony over another, this paper will assess the strengths and weaknesses of the evidence connecting community mediation to each understanding of the term. This analysis will demonstrate the need for clarity regarding the concept of social harmony, the levels of intended change and the supporting evidence used to support it in order to further refine the Theory of Change. The paper concludes by offering some opportunities to further refine the theory and substantiate its community-level claims.

2. Method and Challenges

This paper is based on desk and primary research conducted between July and November, 2012. Desk research included a systematic search of academic and 'grey' literature on community mediation in general and in Nepal.²³ This research phase also featured a review of Foundation documentation on community mediation in Nepal, including past research along with internal and external evaluations. This paper is part of the JSRP-TAF collaboration on Theory of Change and is informed by the literature review on that subject.²⁴

Primary research for this study was conducted in eleven VDCs (subdistricts) across Chitwan, Dadeldhura, Dhanusha, Kailali, Kanchanpur and Nawalparasi districts in Nepal. Sites were limited to VDCs housing Foundation-supported community mediation programmes. Among

²³ 'Grey' literature is the term for reports and documents produced by organisations but which are not formal academic research publications. While this could encompass a vast range of sources, grey literature used for this work primarily included donor and NGO reports as well as academic and think-tank research published outside of peer-reviewed journals or books.

²⁴ Stein, D. and Valters, C. (2012). 'Theory of Change in International Development: A Review of Existing Knowledge'. *JSRP Paper 1*, London: Justice and Security Research Programme and The Asia Foundation

these VDCs, research sites were selected to reflect a broad range of geographic areas though, unlike many parts of Nepal, were accessible by road. These locations were also covered by Foundation-led action research between 2007 and 2010, which provides a basic point of comparison.²⁵ Mediators, former disputants, mediation trainers and local programme staff formed the majority of respondents.

Breakdown of Respondents (interviews and focus groups)				
<i>Cohort</i>	<i>Total People</i>	<i>Total Hours</i>	<i>Male</i>	<i>Female</i>
Mediators	24.34	70	45	25
Former Disputants	7.42	38	18	10
Mediation Trainers	4.91	14	11	3
Advisory Board Members	1.5	3	3	0
Local Officials	6.83	9	9	0
Total	45	124	86	38

Research Limitations

Every effort was made to triangulate responses of the above sources with those of local officials and other community members beyond the immediate reach of the programme. However, time constraints often made reaching the latter group of informants difficult, rendering them a relatively low proportion of overall respondents. A more full study would have also triangulated results with discussions with communities outside each VDC centre, though doing so thoroughly in each location covered by this study would require a number of extra months. Discussions with local and international academics, experts, and civil society members are used to further triangulate the responses of these groups, as are interviews with Foundation staff and implementing partners in Kathmandu.

Mediators and trainers provide key insight into community mediation programming. However, their extensive training may create a specific way of understanding and articulating the programme's effects. This may be compounded by the fact that mediators invest significant unpaid time in the programme and make personal sacrifices in order to participate. Though these factors may be essential to the programme's success, they may also make the

²⁵ This action research was conducted by TAF internally under the aegis of John Paul Lederach. This method used existing mediators and trainers as researchers and aimed to foster new understanding of the programme in these groups, and was used to support the drafting of a new Foundation community mediation manual. See Lederach and Thapa (2012) for a full discussion of this method.

mediators and trainers (who form the largest portion of respondents) more inclined to overemphasise positive impacts of mediation or interpret the impact of their work in within the paradigm set forth by the programme, including the Theory of Change. This tendency may also be present among project implementing partners. Where possible, this paper aimed to take this possibility into account when verifying and analysing primary data. Previous internal and external evaluation may have encountered similar bias by largely focusing on mediators and trainers, though this possibility is not specifically discussed.

Using Evidence in Theories of Change

A final methodological issue for this paper is how to define, understand and use evidence. Academics and donors highlight that rigorous evidence constitutes a combination of information that is systematically derived and triangulated among multiple stakeholders. However, these requirements are often qualified when faced with the difficulties of working in conflict-affected places.²⁶ Literature on Theory of Change is unclear on the role of evidence in substantiating the claims of a theory and often omits such discussion entirely.²⁷

This lack of clarity regarding evidence in Theory of Change is compounded by two factors: an increased emphasis on evidence-based policy and simultaneous debates on the meaning of evidence itself.²⁸ Cartwright et al. argue that there is no definition of evidence applicable to evidence-based policy and programming.²⁹ The absence of such a definition, it is argued, makes attempts to apply evidence to hypotheses and to rank different forms of evidence inevitably limiting, inaccurate and misleading. Yet this lack of clarity is not an excuse to gloss over the difference between robust causal links, differing levels of contribution towards an outcome and a lack of evidence entirely. As such, this paper aims to take a more reflective stance towards evidence in community mediation's Theory of Change. Rather than attempting to establish causality for a complex social phenomenon like social harmony, this paper uses evidence to explore new ways of understanding and substantiating the concept. Doing so means considering the logic underpinning each understanding of social harmony, what kinds of evidence are suitable to demonstrate each understanding and the plausibility of obtaining such evidence.³⁰ By considering these factors, this paper seeks to clarify the concept of social harmony, refine the underpinning Theory of Change and, in so doing, use evidence more realistically and accurately.

²⁶ Van Stolk (2011); James (2011); Vogel (2012), all cited in Stein and Valters (2012)

²⁷ For a full discussion on the varying roles of evidence in Theory of Change, see Stein and Valters (2012).

²⁸ Cartwright, N., Howick, J. and Goldfinch, A. (2008) 'Evidence-based policy: where is our theory of evidence?' *LSE Centre for the Philosophy of Natural and Social Science Technical Report 07/07*, note that the US and UK are the primary drivers of the evidence based policy movement. For a critical discussion on evidence-based policy, see Hammersly, M. (2005). 'Is the evidence-based practice movement doing more harm than good? Reflections on Iain Chalmers' case for research-based policy making and practice'. *Evidence and Policy*, 1(1) pp.85-100.

²⁹ Cartwright et al. (2008)

³⁰ Ibid.

3. Community Mediation in Nepal: Programme and Context

The purpose of this section is to introduce Foundation-supported community mediation and situate it within the broader context of Nepalese justice providers. This discussion will highlight the key characteristics of community mediation and its underpinning contextual factors, including war, justice and disputes.

What is community mediation?

Community mediation is a form of alternative dispute resolution (ADR) intended to complement formal and often informal justice mechanisms. This approach began in the 1970s in the United States as a response to the shortcomings of the formal judiciary. At this point, community mediation was intended to improve access to justice and sought to empower disputants to solve their own problems in the process. Over time, this practice expanded, prompting the creation of a significant theoretical literature and becoming a mainstay of local justice programming in international development.

There are many forms of community mediation, though most rely on an impartial third party to facilitate a settlement without assigning guilt or innocence. Overall, community mediation aims to create a safe space where disputing parties can express themselves, listen to the other, uncover the roots of their dispute and agree on a settlement. Rights-based mediation aims to facilitate an agreement based on legal standards and obligations. Foundation-supported mediation in Nepal follows an interest-based approach, which prioritises ‘discovery, understanding and respect for the needs and interests of all parties’, and does not strictly focus on legal rights and entitlements.³¹ Previous Foundation research found that disputants view community mediation as providing justice based on inclusion, respect and the ability to access ‘solutions to problems, which could often pose threats to survival’.³² Though the prospect of a ‘win-win’ outcome attracts many disputants to the service, the Foundation notes that mediators’ failure to assign guilt may leave some disputants dissatisfied.³³

Broadly speaking, community mediation practices have sparked a number of debates in academic literature. Many of its proponents view community mediation as a viable alternative to elitist, state-based mechanisms of dispute resolution.³⁴ Contrary to this, critics of community mediation in general are sceptical of its claims to transform power relations and often assert that mediation constitutes a form of state oppression.³⁵ It is argued that mediation shifts conflict from the legal to the social realm. Though some view interest-based mediation as reinforcing impunity and marginalisation, others view it as a way for those at the margins

³¹ Thapa, P. (2006). Social Transformation through Community Mediation. *Asian Perspectives on Peacebuilding*. ACTION Asia, pp.57-60.

³² Lederach, J. P., & Thapa, P. (2012). *Staying True in Nepal: Understanding Community Mediation through Action Research*. The Asia Foundation, p14.

³³ The Foundation’s interest-based approach to mediation does not assign guilt or innocence, unlike retributive and restorative models of justice. Foundation evaluations have found that the failure to assign guilt or innocence in mediation is the only source of disputant dissatisfaction.

³⁴ Mulcahy, L. (2000). ‘The Devil and the Deep Blue Sea ? A Critique of the Ability of Community Mediation to Suppress and Facilitate Participation in Civil Life’. *Journal of Law and Society*, 27(March), pp.133-150.

³⁵ These authors are examining community mediation practices in general, and do not consider Foundation-supported mediation. See, Pavlich, G. (1996). ‘The Power of Community Mediation: Government and Formation of Self-Identity’. *Law & Society Review*, 30(4), pp.707-734.; Mulcahy (2000).

of society to access justice.³⁶ As mediation is generally informal or part of a hybrid formal-informal arrangement, it is also often included in many debates regarding the fairness and benefits of informal justice.³⁷

Foundation-supported community mediation in Nepal is a hybrid justice mechanism as it draws on informal practice while enjoying formal legal legitimacy.³⁸ This legitimacy stems from the 1999 Local Self-Government Act (LGSA), which identifies dispute resolution as a core service to be provided at the VDC level, either by VDC officials or mediation panels. This programme relies on VDC officials for case referrals and agreement certification as well as on community volunteers to serve as mediators. Each location maintains a panel of 27 to 30 volunteer mediators who are nominated by their communities.³⁹ These individuals receive general mediation training along with specific training to empower marginalised disputants to express their needs and interests during the mediation process. These skills combined with an effort to balance the gender, caste and ethnicity of mediation panels, are thought to render community mediation more approachable and egalitarian than the formal and traditional justice systems.⁴⁰

Community mediation is legally permitted to see a wide variety of interpersonal and group cases, but cannot adjudicate cases involving serious abuse, rape or murder.⁴¹ In order to resolve these cases, each disputant chooses one mediator who, combined with an additional mediator selected by the VDC, facilitates each closed mediation session. In this session, mediators establish ground rules, facilitate discussion, clarify each party's interest, needs and concerns, explore potential options for resolution and reinforce the importance of coexistence and respect. Mediators may give general advice but are prohibited from advocating on behalf of a particular outcome or disputant. Case resolution culminates once disputants have reached an agreement. Both disputants then sign a document declaring the terms of their resolution, which is then stamped and kept on file at the local VDC office, but bear no official penalty for breaking their terms.

In Nepal, Foundation-supported community mediation takes place in 114 of Nepal's total 3915 VDCs and 58 municipalities. Though often encompassing a diverse population across many project sites, the Foundation understands the 'community' in 'community mediation' as

³⁶ Sangroula, P. Y. (1996). 'Community Mediation: A Pedagogic Reflection in Context of Nepal'. Kathmandu School of Law, pp.1-18.

³⁷ Matthews, R. (1988). *Reassessing Informal Justice*. London: Sage.

³⁸ Interview with representative from ProPublic, an implementing NGO partner, August 2012. This conception of hybrid justice differs from that of hybrid court systems, which became popular models for post-colonial transitional justice. See, for example, Cohen, D. (2007). 'Hybrid' Justice in East Timor, Sierra Leone, and Cambodia: Lessons Learned and Prospects For the Future'. *Stanford Journal of International Law*, 43.

³⁹ The figure of 27 mediators was derived from the fact that each mediation panel has three mediators. Given that there are nine wards in each district, the Foundation concluded that 27 (3x9) was an appropriate number of mediators to have at the VDC level. Following this, the Foundation aims to ensure that these 27 members are demographically representative of their community.

⁴⁰ Aside from being majority male, these powerful members of society are also likely to be members of the upper caste and class, as well as local elders.

⁴¹ According to the LGSA, mediation is not permitted to deal with 'crimes against the state', including serious physical abuse, rape, or murder. The Domestic Violence and Punishment Act passed in 2008 also vested CM with the power to resolve cases involving domestic violence. Community mediation also lacks the power of subpoena, rendering the resolution of a case dependent on the willingness of both disputants to utilise the service. Beyond legal limitations, TAF (2012) also notes that cases in which trauma is too severe or the interests of disputants are too far apart may be better resolved through the formal judiciary.

the population within each VDC boundary. Under the Foundation's direction, each community mediation programme location is established and administered through one of five local implementing partner-NGOs.⁴² Three-to-five years after establishing a programme site, the Foundation creates an endowment fund and transfers financial and administrative control to the VDC, retaining responsibility only for monitoring, practice-sharing and training.⁴³ Transferring the programme in this way aims to ensure mediation's future sustainability. Of the 142 locations, TAF and its implementing partners have handed control of all except for the 24 new locations over to the VDC.⁴⁴

The Nepalese Context

War

Though Nepal has undergone tremendous social, economic and political change in the last fifty years, the civil war from 1996 to 2006 is among the most critical factors in Nepal's justice landscape. This war began as an insurgency, when the Communist Party of Nepal (Maoist) mobilised many poor, rural, and other marginalised groups to fight against the 'Hindu kingdom' and demand a republican constitution.⁴⁵ Though initially considered a marginal security threat by the central Nepalese government, over time this insurgency and the government's retaliation resulted in significant human rights violations, with more than 13,000 reported fatalities and 1,300 missing.⁴⁶ During this period, Maoists often attacked state officials, forcing 68 per cent of them to flee from their village posts to the district headquarters.⁴⁷ This left a significant vacuum of formal governance and dispute resolution in many rural areas, with officials only beginning to return within the last few years.

Although Nepal's 2006 Comprehensive Peace Agreement ended outright fighting, many of the personal and political grievances wrought by this period endure today. Such divisions affect all levels of society, from individual disputes to Nepal's crisis-ridden central government. These tensions are compounded by enduring displacement caused by the conflict, as well as the lack of compensation given to families of former combatants. Following the end of the conflict, many of the same rural poor, minorities and lower caste people that were mobilised to fight continue to find themselves marginalised and socio-economically insecure. The majority of Nepal has seen little violence in the post-conflict period, despite on-going national-level instability.⁴⁸ Given that many community mediation

⁴² These NGOs include: Forum for Protection of Public Interest (Pro-Public), Institute for Governance and Democracy (IGD), Rural Women's Development and Unity Center (RUWDUC), Center for Legal Research and Resource Development (CeLRRd) and Service to Underprivileged Sections of Society (SUUS).

⁴³ Following this handover, VDCs make yearly contributions to the mediation endowment funds. VDCs may also cover the expenses of mediators and salaries of the local coordinators.

⁴⁴ Interview with TAF staff August 8, 2012, Kathmandu

⁴⁵ Thapa (2012). 'The Making of the Maoist Insurgency'. In S. Von Einsidel, D. Malone and S. Pradhan (Eds.) *Nepal in Transition*: Cambridge: Cambridge University Press.; De Sales, A. (2007). 'The Kham Magar Country: Between Ethnic Claims and Maoism'. In D. Gellner (Ed.) *Resistance and the State: Nepalese Experiences*. New Delhi: Social Science Press, p340.

⁴⁶ OHCHR (2012) documents these violations in detail, citing torture, arbitrary arrest, forced disappearance and rape as the most common violations committed by both the Maoist and government forces.

⁴⁷ Von Einsidel, S., Malone, D. and Pradhan, S. (2012). 'Introduction'. In S. Von Einsidel, D. Malone, and S. Pradhan (Eds.), *Nepal in Transition*. Cambridge: Cambridge University Press, pp.1-37.

⁴⁸ At the time of writing, a number of major, national-level issues have yet to be resolved. This includes the drafting of a national constitution, resuming national and local level elections and implementing many components of the comprehensive peace agreement that ended the conflict. Among these components, those

locations were established during or immediately following the conflict, any claim of improved harmony or peace should be understood in the context of the country's broader transition to peace.

Justice

Community mediation in Nepal was largely premised on two key contextual factors: the inability of many people to access justice and the poor quality of justice available others. This is consistent with the broader community mediation movement born in North America and Western Europe, which was largely a response to an elite-driven and ineffective judiciary. Though the conditions that prompted this movement were born from Western experiences, they nevertheless provide a firm basis of the use of community mediation and ADR in developing countries and post-conflict contexts. This is particularly apt in Nepal, where the shortcomings of the formal justice system are often cited as the most important contextual factor underpinning community mediation.

In terms of access, Nepal's courts are the primary arm of the formal justice system and are located in district headquarters many miles from most communities. Courts tend to be heavily backlogged, with processing times of months or years.⁴⁹ Going to court is also expensive: a 2003 baseline study completed by a Foundation implementing partner found that resolving the average court case cost 1300 Nepalese Rupees (15US\$ equivalent). Bribing local officials or paying middle men to 'speed up' cases means the actual cost of using these services is likely to be much higher and unaffordable to most people.⁵⁰ While Nepal's per capita income is \$645 per year, over thirty per cent of people in rural areas live on \$12 per person per month.⁵¹ Additionally, court proceedings often require disputants to present written evidence and read and write documents, putting the processes largely out of reach for the 41 per cent of Nepal's adult population that is illiterate.⁵² Upreti concludes that the formal system is inaccessible and ineffective, noting that only 5 per cent of former disputants, NGO workers and government officials surveyed rated their performance as 'good'.⁵³ In previous studies by the Foundation and Saferworld, respondents across Nepal identified these costs and inefficiencies as factors discouraging them from bringing cases to court.⁵⁴

In addition to high entry barriers, a number of factors bring into question the quality of justice available in Nepal. Indeed, the influence of political parties and corruption in the formal system leaves many Nepalis to question whether its verdicts are fair. Caplan identifies how in the past, formal justice institutions were regarded with suspicion by many ethnic minority groups, who saw them as a high caste instrument to reduce the power of 'hitherto

related to establishing a federal system in Nepal as well as a transitional justice mechanism to deal with the legacy of the conflict, are particularly divisive.

⁴⁹ IGD Baseline Report (2003), Dhanusa District. This report was completed in preparation for the establishment of Foundation-supported community mediation programmes in 2004.

⁵⁰ Ibid.

⁵¹ (2011, July 7) 'Per capita income up'. The Kathmandu Post. <http://www.ekantipur.com/thekathmandu-post/2011/07/07/money/per-capita-income-up/223737.html>

⁵² World Bank Data, Literacy rate, adult total (% of people ages 15 and above), available at <http://data.worldbank.org/indicator/>

⁵³ Upreti, B.R. (2004a). 'Resource Conflicts and Conflict Resolution in Nepal'. *Mountain Resource and Development*, 24(1), pp.60-66.

⁵⁴ Reflected in TAF (2012a) and Aitken (2011). Also confirmed in #36 interview with male trainer, Kailali district; #49 mixed gender focus group of disputants

autonomous communities'.⁵⁵ In reference to the current system, a number of academics have argued that Nepalese courts are 'used systematically to discriminate against the less powerful', including women, the poor, ethnic minorities and lower castes.⁵⁶ Furthermore, Upreti finds that 91 per cent of Nepalis used bribes, personal networks or political connections to sway the outcome of a case in the formal system.⁵⁷ These conclusions are likely reflected in a 2009 Saferworld survey, which found that only 36 per cent of Nepalis polled believe that the courts treat all people equally.⁵⁸ As Dahal and Bhatta note, 'while a number of laws enshrine equal treatment for [marginalised] groups, the extent of enforcement and the ability of these groups to navigate this system remain unclear'.⁵⁹

Beyond the formal system, Nepal also has a rich history of traditional and informal dispute resolution. For example, Caplan highlights historical forms of mediation and adjudication by local elders and leaders.⁶⁰ According to Khadka, these practices have evolved not based on state law, but rather on the inherent power of local elders, leaders, headmen,⁶¹ while Oli notes that these practices are often shaped by traditional values and religious beliefs. Upreti highlights that in Nepal, 'mediation is one of the most common indigenous methods of conflict resolution'.⁶² Some systems may be tied to specific ethnic communities like those of the Tharu, Thakalis and Magars, while others like Mukyia in the Far West encompass a broad range of ethnic groups.⁶³ Political actors also have a long history of resolving disputes in Nepal, a practice that Upreti notes grew significantly following the 1990 end of the Panchayat era and Nepal's transition to multi-party democracy.⁶⁴ This patchwork of justice providers is complicated by the range of uncoordinated, customary laws operating across the country.⁶⁵ Though largely accepted by their own communities, Nepal's traditional forms of justice may be coloured by patriarchal, class and caste-based power relations, often skewing their decisions against women, lower-caste and ethnic minorities.⁶⁶

⁵⁵ Caplan, L. (1995). 'The milieu of disputation: Managing quarrels in East Nepal'. In P. Caplan (Ed.), *Understanding Disputes: The Politics of Argument*. Oxford: Berg Publishers, p155

⁵⁶ Upreti, B.R. (2008). 'Dispute Settlement at the Local Level: Observations and Lessons from Nepal'. In Gellner and Hachhethu (Eds.) *Local Democracy in South Asia*, London: Sage, pp.150-174; Aitken, K. M. (2010). *Justice should be blind, but is the international community's support to informal justice mechanisms in Nepal given blindly?* Saferworld.; see also Center for Legal Research and Development (1999). *Analysis and Reform of the Criminal Justice System in Nepal, Kathmandu*.

⁵⁷ Upreti (2004a)

⁵⁸ Interdisciplinary Analysts and Saferworld. (2010). *Treading Water? Security and Justice in Nepal in 2009*. Kathmandu and London, p.iv.

⁵⁹ Dahal, D. R. and Bhatta, C. D. (2008). *The Relevance of Local Conflict Resolution Mechanisms for Systemic Conflict Transformation in Nepal*. Berghof Foundation for Peace Support, (August.); example General Code 1963

⁶⁰ Caplan (1995)

⁶¹ Khadka, R.D. (1997). 'Sources of Dispute and Methods of Resolving them in Sindhuli, Nepal'. *Proceedings of Dispute Management Systems Management Workshop*. Hawaii: East-West Centre. See, for example, Upreti (2006) for a complete discussion of Nepal's TDR landscape. Additionally, Coyle, D. and S. Dalrymple (2011) *Snapshots of informal justice provisions in Kaski, Panchthar, and Dhanusha districts, Nepal*. Saferworld (May) provides useful insight into some of Nepal's extant TDR systems.

⁶² Upreti, B.R. (2004b). *The Price of Neglect*. Kathmandu: Bhrikuti Academic Publications, 37.

⁶³ Oli, K.P. (1998). *Dispute Resolution and Resource Management*. Kathmandu: IUCN-Nepal.

⁶⁴ Upreti, B.R. (2008). 'Dispute Settlement at the Local Level: Observations and Lessons from Nepal'. In Gellner and Hachhethu (Eds.) *Local Democracy in South Asia*, London: Sage, 150-174.

⁶⁵ Ibid, 1.

⁶⁶ Interview with reps from ProPublic, August 5, 2012; In contrast to mediation, arbitration processes include a single person who hears both sides of a case and renders a decision, which is often binding.; Interview with TAF Staff, Kathmandu.

Compounding issues of access, Foundation literature cites migration and modernisation as contributing to the breakdown of traditional dispute resolution in Nepal, particularly in the mid-hills and Terai. In this context, many NGOs, cooperatives, social movements and CBOs are now also engaged in various forms of dispute settlement.⁶⁷ Upreti highlights how the Maoists specifically disrupted traditional dispute resolution systems during the conflict period by establishing ‘People’s Courts’ at the village, district and regional level.⁶⁸ According to Panthi, these ad-hoc mechanisms were more accessible than formal state institutions but decided cases based ‘on class preference’ rather than ‘on absolute impartiality’.⁶⁹ Sharma notes that decisions of these ‘People’s Courts’ were often made based on personal motives and dealt punishments ranging from fines, labor in camps and executions.⁷⁰ While the entry of the Maoist party into mainstream Nepalese politics following the conflict has left these mechanisms largely defunct, individual political leaders of all parties reportedly continue to adjudicate disputes on an informal basis.⁷¹

Disputes

Beyond the legacy of the conflict, respondents across all research locations cited a number of issues as driving their need for justice services. Among these issues, land ownership and property boundaries were the most common sources of disputes. This is unsurprising given the numerous forms of land tenure throughout Nepal’s history, combined with a consistent lack of documentation and recent, conflict-related displacement.⁷² This is further compounded by the fact that eighty-five per cent of the Nepalese population lives in rural areas, of which the majority of households depend on agricultural activities for their livelihoods. In addition, women face particular difficulties in Nepal, with a 2007 study finding 35 per cent of women in Nepal have experienced violence in the home.⁷³ As such, family issues, including domestic violence and tensions between siblings and in-laws are also significant factors in disputes, though current reporting does not further delineate these categories.

The Context in Case Study Locations

The majority of case study locations are within Nepal’s Terai region, a southern belt running the length of the country alongside India, with which Nepal shares an open border. Political instability in the Terai following the 2006 end of Nepal’s conflict has made this region the subject of many economic development activities and practitioner studies.⁷⁴ However,

⁶⁷ Upreti (2008)

⁶⁸ For more on the People’s Courts, see (2006) ‘Judged by the People’. *The Economist*, 5 Oct. Available at <http://www.economist.com/node/8001629>.

⁶⁹ Panthi, K. (2004). ‘Kasari Calirahecha Maobadi Janasatta? (How does the Maoist People’s Government Function?)’ *Mulyankan Monthly*, 126(11), 41-43, quoted in Upreti (2008).

⁷⁰ Sharma, S. (2004). ‘The Maoist Movement: An Evolutionary Perspective’. In M. Hutt (Ed.) *Himalyan People’s War*. London: Hurst & Company.

⁷¹ This was the case in a number of locations visited over the course of primary research, including VDCs in Kailali and Kanchanpur Districts.

⁷² Regmi, M.C. (1976). *Land Ownership in Nepal*. Berkeley, CA: University of California Press.

⁷³ Paudel, G. S. (2007). Domestic Violence against Women in Nepal. *Gender, Technology and Development*, 11(2), pp.199-233.

⁷⁴ Oilleuz A. (2012). *Authority, leadership and democracy in southern Nepal: A village ethnography*. PhD Dissertation, University of Oslo, on file with author.

relatively little academic attention has been paid to this area, particularly concerning social and political analysis.⁷⁵ This area is highly diverse, encompassing a range of ethnicities and languages. The term ‘Madhesh’ is synonymous with the Terai, with Madhesi the term for those who are native speakers of languages of this area, regardless of birthplace and ethnicity.⁷⁶ Nepal’s Mahendra highway runs East-West across much of the Terai, making it significantly more accessible than the country’s hills and mountain areas. Following an official policy to increase migration from the hills to the plains, the Terai’s population increased five-fold since 1951. Currently, 58 per cent of the Foundation’s mediation programme locations are located in districts in the Terai.

Nawalparasi and **Chitwan** are adjoining districts located in Nepal’s Western region, with populations of 643,598 and 579,984, respectively.⁷⁷ These districts have experienced significant in-migration in recent years, leading to an increasingly heterogeneous population. This migration has also increased the price of land in these areas, creating tensions related to property boundaries and encroachment between neighbours. Land is the most common source of conflicts brought to mediation, particularly in Nawalparasi district. During the June to December 2012 reporting period, 101 disputes were brought to Foundation-supported mediation in Nawalparasi and 116 in Chitwan.

Dhanusha is a Terai district located in Nepal’s Central region with a population of 754,777.⁷⁸ With a population over 90 per cent Madhesi, this district has been the site of ethno-political violence, particularly in urban Janakpur municipality.⁷⁹ Land-related issues and physical assault are the most common causes of disputes brought to mediation in Dhanusha. During the June to December 2012 reporting period, 120 disputes were brought to Foundation-supported mediation in Dhanusha.

Kailali and **Kanchanpur** are adjoining districts in Nepal’s Far West with populations of 775,709 and 451,248 respectively.⁸⁰ Among districts considered in this study, these Kailali and Kanchanpur were most severely affected during Nepal’s conflict in terms of casualties and disappearances. Current debates regarding federal restructuring are particularly active in the Far West, which many respondents noted have begun to divide communities and deepen political entrenchment. In the past, domestic quarrels and violence have been among the most common causes of disputes brought to mediation. During the June to December 2012 reporting period, 64 disputes were brought to Foundation-supported mediation in Kanchanpur and 73 in Kailali.

Beyond the Terai, **Dadeldhura** is the only district in Nepal’s hill region covered by this study and has a population of 142,094.⁸¹ Though a four-hour drive from the nearest airport in

⁷⁵ Chaudhary, D. (2011). *Tarai/Madhesh of Nepal: An Anthropological Study*. Ratna Pustak Bhandar: Kathmandu.

⁷⁶ International Crisis Group. (2007). *Nepal’s Troubled Terai Region*. Asia report number 136, Kathmandu / London. Available at http://un.org.np/sites/default/files/report/tid_105/2007-07-14-nepal_s_troubled_tarai_region.pdf.

⁷⁷ Nepal National Bureau of Statistics. (2011) National Population and Housing Census 2011 – Village Development Committee/Municipality. Available at http://cbs.gov.np/wp-content/uploads/2012/11/VDC_Municipality.pdf.

⁷⁸ Nepal National Bureau of Statistics (2011)

⁷⁹ For example, see (2012, April 30). ‘Janakpur Blast Condemned’. *The Kathmandu Post*, available at, <http://www.ekantipur.com/the-kathmandu-post/2012/04/30/nation/janakpur-blastcondemned/234354.html>.

⁸⁰ Nepal National Bureau of Statistics (2011)

⁸¹ Ibid.

Kailali district, this far-West district is entirely rural but still very accessible as compared with many hill areas that are only reachable on foot. With a comparatively smaller population than Terai districts, land in this area is more plentiful, leaving domestic and family issues along with alcoholism and inheritance as the most prominent topics of disputes brought to mediation. During the June to December 2012 reporting period, 48 disputes were brought to mediation in Dadeldhura.

4. History of the Theory of Change in Practice

Over time, the ways that Foundation staff and partners have understood and explicitly framed community mediation in Nepal have changed significantly. The purpose of this section is to use the conceptual basis of Theory of Change – that each programme is based on explicit or implicit theories about how change happens – to examine how and why these changes in framing and corresponding changes in programming occurred.⁸²

Foundation-supported community mediation in Nepal began purely as an access-to-justice service, and initially as one element of other programmes with broader aims.⁸³ The Foundation's early incarnations of mediation began in 1993 as part of a programme aimed at strengthening democratic institutions. A year later, the Foundation transitioned to implementing community mediation as part of the Women's Rights and Representation project, which concluded in 1997. This programme aimed to increase access to local justice at a time when traditional dispute resolution mechanisms were seen to be breaking down.⁸⁴ Despite Nepal's mounting political unrest, at this point mediation programming focused on access to justice, with little reference to peacebuilding goals.

Since then, the goals of the mediation programme evolved along with Nepal's shifting justice needs, a growing emphasis on peacebuilding by donors and the Foundation's own understanding of mediation. Though access to justice remained the goal of the programme, the Foundation's current mediation programme – originally titled 'The Dispute Resolution through Village Development Committees and Municipalities project'⁸⁵ - represents a break from the initial approach. This break is literal, as the programme began in 2001, four years after the previous one finished. The opportunities for local justice granted by the LSGA in 1999 also separate this programme from the last, providing a legal basis for mediation to function in conjunction with government at the VDC level. Though this programme began during Nepal's ten-year civil war, it remained focused on dispute resolution; conflict mitigation did not specifically shape initial programme goals and decisions.

By 2003, programme documents began to highlight 'creating a culture of conflict resolution' as a goal of mediation, in addition to providing access to justice. In this year, a ceasefire between Maoists and government forces was agreed and then abrogated eight months later.

⁸² Stein and Valters (2012)

⁸³ Interview with TAF staff, August 2012, Kathmandu

⁸⁴ Kaplan, P. (1995). Community Mediation Research Project. The Asia Foundation. Kathmandu.

⁸⁵ The 1992 VDC Act and the Municipality Act of the same year gave judicial and dispute resolution power to the local judiciary committee. The LSGA repealed these acts and gave the VDC the power to settle cases.

Against this backdrop of instability, reports from project locations suggested that community mediation was contributing to a number of unforeseen changes: communities seemed more peaceful and marginalised groups reported receiving more respect.⁸⁶ Moving toward an increased emphasis on peacebuilding, the Foundation began to examine these potential spin-off effects using John Paul Lederach's understanding of conflict transformation.⁸⁷ This highlighted mediation's capacity to build 'relationships of trust between disputants and address the roots of the conflict', which appears to constitute an early version of the current social harmony claim.⁸⁸ This re-framing coincided with the official end of Nepal's conflict in 2006 and marked the beginning of a new emphasis on peacebuilding, stability and hybrid justice in Nepal.⁸⁹ At this point, the Foundation's implicit Theory of Change for community mediation shifted to more closely align with the goals of conflict transformation, though without the explicit 'social harmony' language used today.

Since then, the Foundation has increasingly framed community mediation in terms of conflict resolution and peacebuilding. By 2007, 'strengthening mediator capacity for conflict transformation' and 'mobilising individuals as a source for peace in the community' had become two of five objectives in the Foundation's two-year strategic plan for mediation.⁹⁰ Subsequent Foundation reports continued to frame mediation in peacebuilding terms, with social justice recognised as a significant component of the process.⁹¹ Action research conducted between 2007 and 2010 aimed to explore additional effects of mediation, and concluded that mediation contributed to harmony as fostered by cooperation and respect.⁹² This research serves as the basis of the social harmony claim in the Foundation's current Theory of Change. Following this, the Foundation also began to train mediators and other local volunteers in conflict resolution skills as part of this programme, further underlining the shift to a peacebuilding framework for community mediation.

As a requirement for DFID for peacebuilding projects in 2012, the Foundation formally articulated a Theory of Change for community mediation.⁹³ This coincided with the growing use of Theory of Change by DFID and other donors as part of their increased emphasis on 'evidence-based programming', and prompted the Foundation to make its implicit theories explicit. The Foundation now uses explicit Theories of Change primarily to describe community mediation's goals to staff, partners and donors, as well as to aid in their project planning and evaluation. Highlighting access to justice, social harmony and state-society relations as goals of the programme, this explicit Theory of Change captures a more expansive view of the programme than held in 1993 or even 2001. Indeed, adding improving 'social harmony' and 'state-society relations' as stated goals of community mediation

⁸⁶ Shrestha (2006). 'Final Assessment Report: Community Mediation Project'. Submitted to The Asia Foundation, October 25.

⁸⁷ Jean Paul Lederach is an American academic who has published extensively on theories of conflict transformation. He became involved in the Foundation's mediation programming through his work with the McConnell Foundation, one of the primary donors to Foundation-supported mediation. Lederach has since become an advisor to the programme. For more on conflict transformation, see Lederach, J.P. (2003). *The Little Book of Conflict Transformation: A Clear Articulation of Guiding Principles by a Pioneer in the Field*. PA: Good Books.

⁸⁸ Ibid., p.30 – Reports in 2006 began to reference potential social justice effects of community mediation though disclosure of interests, inclusion of marginalised groups and improvement in relationships.

⁸⁹ Thapa, M. (2005). *Forget Kathmandu: An Elegy for Democracy*. Delhi: Penguin Books.

⁹⁰ The Asia Foundation and McConnell Foundation. Strategic Plan, McConnell Foundation Grant, July 2007-September 2009, Community Mediation Programme.

⁹¹ TAF (2006) Consolidating and Expanding Community Mediation. Report for USAID. Unpublished.

⁹² TAF (2012a)

⁹³ Paraphrased from TAF (2012a)

expands the programme's aims beyond concrete justice provision to higher-level, longer-term, and potentially aspirational. The Foundation's addition of state-society relations as a goal can also be understood in the context of increasing attempts by donors and development practitioners to understand the relationship between the state, local communities and civil society and to situate the programme within processes of wider social change⁹⁴

This history shows that Foundation-supported community mediation has been framed in a number of different ways since its inception. Beyond merely adding to its goals, the Foundation now frames mediation significantly more expansively than when the programme began. This expansion may be the natural progression of a popular programme set in a fluid context, the result of adopting a Theory of Change approach as part of donor requirements, or a combination of the two.⁹⁵ While Theories of Change are intended to promote exploration of programme processes, creating them in response to donor requirements may render them simply descriptive tools and may incentivise organisations to describe their programming in normative and potentially aspirational ways.⁹⁶ The emergence of high-level goals like improving 'social harmony' and 'state society relations' over time may be one example of this. Nevertheless, this explicit Theory of Change also provides a starting point for further research that may better ground its underpinning ideas, refine the theory and ultimately improve programming. These pressures combined with community mediation's evolving claims indicate the need to both clarify the goals central to the Theory of Change and investigate the evidence base underpinning them.

5. Analysis of the Social Harmony Theory

The previous section demonstrated that as the Foundation's community mediation programming evolved, so too did its implicit theories of change and modes of framing. Within the current peacebuilding framing, the term 'social harmony' has emerged as a useful though vague way for the Foundation to describe a number of wider, and longer-term, effects of community mediation. In an attempt to give this term the analytical precision needed to inform a robust Theory of Change, this section will develop a number of possible understandings of social harmony based on Foundation documents, staff interviews, and wider usage of 'social harmony' in Nepal. In so doing, it will explore the Theory of Change connecting community mediation to 'social harmony' by examining three potential meanings of the term: reduced disputes, improved relationships and social inclusion and empowerment. These understandings are not explicitly outlined in the Theory of Change, but rather are broader themes in interviews with Foundation staff, mediators, trainers and disputants regarding mediation. The relevance of these understandings of social harmony is also substantiated by academic research on community mediation theory and practice. Though these understandings of social harmony often overlap, this section will elaborate on each, examine the processes supporting them and assess their relevance to Nepalese society. In doing so, it will identify strengths and weaknesses of the evidence connecting community mediation to each understanding of social harmony, with special attention to individual and community-level effects.

⁹⁴ DFID. (2011). *Building Peaceful States and Societies: A DFID Practice Paper*. London.

⁹⁵ Stein and Valters (2012); Wigboldus, S. and Brouwers, J. (2011). 'Rigid plan or vague vision: How precise does a ToC needs to be?' Hivos E-dialogues. Available at <http://www.hivos.nl/eng/Hivos-KnowledgeProgramme/Themes/Theory-of-Change/E-dialogues/E-dialogue-2>.

⁹⁶ Wigboldus and Brouwers (2011)

Dispute Resolution and Prevention

The primary aim of community mediation is to resolve disputes. In Nepalese communities, even small disputes can seriously affect many aspects of everyday life in both the short and long term. For example, Caplan illustrates how seemingly minor land and family disputes in Eastern Nepal present the ‘potential for serious intra-community quarrels’ that last for centuries.⁹⁷ Similarly, Forbes notes how a land dispute can extend across generations and divide a village.⁹⁸ Speaking in more extreme terms, Upreti argues that the ‘failure to manage local social and resource disputes has contributed to the escalation of the Maoist armed rebellion’.⁹⁹

The Foundation’s Theory of Change recognises many of these same dynamics:

Unresolved disputes affect social harmony. The community mediation programme acts as a mechanism to solve/remove the obstacles that are causing social disharmony...based on performance levels and user satisfaction data...[it is expected that] expansion of the mediation programme will contribute to improvements in communal and social harmony.¹⁰⁰

In this case, the Foundation frames social harmony similarly to how academics and practitioners do: in terms of coexistence¹⁰¹ and reduced disputes and violence.¹⁰² This understanding directly affects individual disputants and relies on the aggregation of interpersonal interactions to indirectly change collective experiences. In this case, equal weight appears to be given to resolving disputes within the same community as between different communities.

Evidence Discussion

Foundation reporting data shows strong evidence of community mediation’s ability to resolve disputes. Most simply, Foundation-supported mediation has settled over 16,000 disputes since 2002.¹⁰³ Mediation’s 85 per cent dispute settlement rate is particularly impressive compared with the 20 per cent settlement rates in Nepal’s court-referred mediation.¹⁰⁴ A 2012 Foundation survey also found that disputants assigned an average of 9.11/10 strength to the statement ‘community mediation is reliable for dispute resolution’, indicating that they strongly agreed.¹⁰⁵ Furthermore, a 2009 evaluation notes that community mediation ‘is helping to resolve many kinds of disputes amicably and thus helping to maintain social

⁹⁷ Caplan (1995:156)

⁹⁸ Forbes, A.A. (1999). ‘Mapping Power: Disputing Claims to Kipat Lands in North Eastern Nepal’. *American Ethnologist*, 26(1) pp.114-138.

⁹⁹ Upreti (2004a)

¹⁰⁰ TAF (2012a)

¹⁰¹ Upreti and Möler-Böker (2010). ‘Introduction’. In Upreti and Möler-Böker (Eds.), *Livelihood Insecurity and Social Conflict in Nepal*. Kathmandu: South Asia Regional Coordination Office, 1-9.

¹⁰² S Organisation Information on Backward Society Education and Caritas Nepal.

¹⁰³ TAF (2012a)

¹⁰⁴ Community Mediators’ Society. (2012). *A Study of Court Referred Mediation in Nepal*. December: Kathmandu, on file with author.

¹⁰⁵ TAF (2012b). Community Report Card Survey. Internal document, on file with author.

harmony between individuals and groups'.¹⁰⁶

Blattman et al. argue that these success rates can be attributed to community mediation's ability to decrease social costs of cooperation and increase the social costs of defection from agreements, thus improving collective action (in the form of dispute settlement).¹⁰⁷ However, it should be noted that the voluntary nature of mediation, where both parties must willingly attend, may pre-select disputes that are easier to resolve as compared with disputes in courts, where disputants are forced to attend. Though it is not possible to know how many disputes are resolved by community mediation that would not be resolved otherwise, given the programme's low cost and local accessibility, it is reasonable to conclude that this programme may increase dispute resolution rates in its communities.

Primary research largely confirms these conclusions. Respondents across research sites observed that mediation reduced the overall level of disputes, which was often equated with promoting social harmony. As one mediator from Chitwan district noted, with community mediation, 'the number of disputes have gone down, people don't need to go to district courts. Society is moving toward being less conflict-ridden'.¹⁰⁸ Additionally, many interviews reflected that community mediation had increased the number of disputes resolved by reducing stigma associated with justice seeking.¹⁰⁹ Described as a creating a 'culture of conflict resolution', this echoes theories of conflict transformation, in which effective conflict handling can normalise community views toward disputes and 'reinforce the society's confidence in its [...] capacity to manage conflict peacefully'.¹¹⁰ As one public official in Kailali district noted, 'unlike before, people do not tolerate disputes in order to preserve their honour. They no longer keep quiet, they just go to the mediation centre because it's easy and they can keep their reputation'.¹¹¹ While it is logical to conclude that shifting community perceptions of disputes could allow more disputes to be resolved, current Foundation reporting does not attempt to capture this shift. Engagement with disputants to uncover why they chose community mediation and how they would have resolved their dispute in its absence would help to support this claim.

Finally, the Theory of Change implies that resolving disputes also prevents them from escalating to violent conflict and recurring in the future. Current evidence for this claim is based largely on Foundation reporting statistics, including 90.1 per cent agreement implementation rates and 91 per cent disputant satisfaction rates among those surveyed.¹¹² The Foundation interprets high disputant satisfaction as an indication of the sustainability of agreements, as satisfied disputants are considered more likely to implement their agreement. Although the Foundation has not systematically tracked agreement implementation over the long term, recent Citizen Report Card surveys show that randomly selected disputants assign an average value of 8.92/10 to the statement 'the dispute is now fully settled' and 8.71/10 to the statement 'satisfied with the duration of the resolution'. Additionally, one VDC secretary

¹⁰⁶ Shah, S. and Thapa, M. (2009). *Transforming Conflicts, Sustaining Peace: Impact Evaluation of Community Mediation Programs*. Submitted to The Asia Foundation, July p.36

¹⁰⁷ Blattman, C., Hartman, A., & Blair, R. (2012). *Building institutions at the micro-level: Results from a field experiment in property dispute and conflict resolution*. Unpublished.

¹⁰⁸ Interview #27, male disputant, Chitwan District

¹⁰⁹ This was a common theme in many interviews conducted for this paper. Interview #16 with CellerD representative,

¹¹⁰ Miall, H. (2001). 'Conflict Transformation: A Multi-Dimensional Task'. Berghof Handbook, p.11 Available at http://www.berghof-handbook.net/documents/publications/miall_handbook.pdf

¹¹¹ #62 interview with public officials, Kailali district; #24, interview with male mediator, Nawalparasi district.

¹¹² TAF (2012a)

suggested that the skills taught as part of community mediation may contribute both directly and indirectly to resolution sustainability: ‘community mediation shows people how to solve disputes. When this awareness is there it prevents disputes from arising’.¹¹³ Fully substantiating the argument of dispute prevention immediately encounters the problem of accounting for the absence of a phenomenon. Long term tracking of resolution implementation, research into dispute prevention behaviour learned by disputants through mediation and comparison of dispute levels in VDCs with and without mediation would further substantiate this claim.¹¹⁴

Limitations and Conclusions

Resolving disputes entails tangible goals that are easily captured in programme reporting, though corresponds to a fairly limited notion of ‘social harmony’ similar to coexistence. When considering social harmony in terms of reduced disputes, it is important to consider the primary causes of social disharmony in Nepal. On a day-to day-basis, land, property and family disputes are significant destabilising factors in communities, which are often dealt with effectively in mediation. More broadly speaking however, in recent history, the most significant source of disharmony was Nepal’s civil war. The end of the war in 2006 may be one explanation for reduced dispute levels in conflict-affected areas following this period. Beyond this, disputants and mediators note that current sources of disharmony include disagreement over federal restructuring,¹¹⁵ poverty and social marginalisation, crime along the border with India,¹¹⁶ and post-conflict grievances.¹¹⁷ Though mediators report seeing increasingly complex cases, they suggest that such issues were not generally factors in disputes brought to mediation. These larger issues destabilise communities but either lack specific flashpoints and disputants or manifest in serious crimes, both of which render them inappropriate for mediation. This suggests a distinction between disputes and conflict that may be key to understanding the limitations of mediation, but also indicates the need to further investigate how such issues may manifest in the disputes that are brought to this service.

The above discussion showed strong evidence that community mediation effectively resolves and may reduce disputes, according to Foundation reporting and primary research. These disputes are likely limited to those seen by community mediation locally, but more information is necessary to explore how this service may affect more serious disputes not appropriate for mediation. Nevertheless, this section has highlighted that more information regarding settlement sustainability, behaviour change and comparison of VDCs with mediation with those without it is necessary to connect community mediation with dispute

¹¹³ #38 interview with VDC secretary from Ganeshpur and Ashigram VDCs, Dadeldhura district

¹¹⁴ Shah and Thapa (2009:19)

¹¹⁵ #57 interview with male mediator, #60 interview with female mediator, #61 interview with female mediator, #63 interview with male mediator, #67 interview with male mediator, all in Kailali district; #63 focus group discussion with two male and two female mediators, Kanchanpur district.

¹¹⁶ #56 focus group with mediators, Kailali district; #64 focus group with mediators in Kanchanpur district. Nepal and India maintain an open border across which Nepalese and Indian citizens travel freely. Respondents cited concerns about arms smuggling as well as cross border theft in Nepalese communities along the Indian border.

¹¹⁷ #64, #65, #66 – all focus group discussions with mediators in Kanchanpur districts. While surviving families of government soldiers killed in the conflict receive pensions and benefits, the surviving families of Maoist soldiers do not. This unequal treatment is considered an injustice by families of fallen Maoists, who believe that it amounts to the government assigning innocence and guilt in a conflict without a clear winner.

prevention.

Relationship Building

Beyond merely solving disputes, social harmony is often framed as a state of improved relationships. Cheung and Ma define social harmony as ‘a desirable, healthy state of relationships among people in society’ on both interpersonal and societal levels.¹¹⁸ Jha along with Glasford and Calcango employ ‘social harmony’ to describe ‘civil accord’ and amicable relationships, respectively. In reference to Nepal, USAID frames ‘social harmony’ in terms of fostering community cooperation, while UNDP identifies promoting community celebrations and festivals as a particular way to achieve this. ‘Social harmony’ also appears in academic discussions framed in terms of trust¹¹⁹ and as shorthand for a lack of inter-ethnic and political conflict.¹²⁰ Additionally, Nepalese news articles use this term to discuss inter-group cooperation, particularly concerning caste and ethnicity.¹²¹ The concept of ‘social harmony’ is particularly salient in Nepalese society, as the tight-knit nature of many communities means that disputants often feel they cannot ‘afford to lose’ their relationships.¹²²

Similar to these understandings, the Foundation identifies repairing relationships between disputants as an important way to promote social harmony. As noted in the Theory of Change, ‘harmony’ focuses primarily on the relational value of cooperation and respect fostered by a process that permits people to talk about their relationships, communication, and decision making’.¹²³ By providing an arena of non-competitive interaction, community mediation aims to improve interactions between disputants, allowing for the genuine cooperation necessary for sustainable agreements.¹²⁴ The Theory of Change also notes that community mediation aims to promote harmony by building relationships *between* groups that have experienced ‘historic tensions’, such as caste, ethnic, gender, class and political groups.

Evidence Discussion: Interpersonal Relationships

As interpersonal relationships form the basis of many disputes, mediation theory highlights the plausibility of understanding social harmony in terms of interpersonal relationships. Pavlich notes that by ‘encourag[ing] disputants to seek reformed, non-disputing self-

¹¹⁸ Cheung, C., and Ma, S. K. (2010). Coupling Social Solidarity and Social Harmony in Hong Kong. *Social Indicators Research*, 103(1), p145.

¹¹⁹ Upreti, B.R. and Möler-Böker, U. (2010). ‘Introduction’. In B.R. Upreti and U. Möler-Böker (Eds.) *Livelihood Insecurity and Social Conflict in Nepal*. South Asia Regional Coordination Office, Kathmandu.

¹²⁰ Adhikani, J. (2010). ‘Food insecurity, conflict and livelihood threats in Nepal’. In B.R. Upreti and U. Möler-Böker (Eds.) *Livelihood Insecurity and Social Conflict in Nepal*. South Asia Regional Coordination Office, Kathmandu, pp.73-122.

¹²¹ Sedhai, R.(2011, October 10). ‘The lower orders: Increasing family ties between different ethnic groups cementing social harmony’. *Kathmandu Post*. Available at, <http://www.ekantipur.com/the-kathmandu-post/2011/10/10/nation/the-lower-orders-increasing-family-ties-between-different-ethnic-groups-cementing-social-harmony/227056.html>; (2011, February 13). ‘A Place to Belong’. *The Kathmandu Post*. Available at, <http://www.ekantipur.com/the-kathmandu-post/2011/02/13/oped/a-place-to-belong/218414.html>.

¹²² #22 interview with female disputant, Nawalparasi District

¹²³ TAF (2012a)

¹²⁴ Ibid.

identities', mediation aims to repair relationships by first transforming individuals.¹²⁵ Mulcahy notes that dialogue-based arenas like mediation may facilitate this process by creating a space to debate 'what constitutes legitimate behaviour' between individuals.¹²⁶ In these cases, the norms established by the mediator – equality, respect and cooperation – may become internalised in the disputant relationships and foster trust over time.¹²⁷ Though this approach seems to understand social harmony as rising from the aggregation of improved interpersonal relationships, the mechanism by which interpersonal interaction affects broader society, or indeed other interpersonal relationships within that society is not considered in the current Theory of Change.

Foundation reporting indicates that community mediation may improve interpersonal relationships between disputants. In a recent study, the Foundation found that 96 per cent of disputants surveyed maintain good relationships with their co-disputant within three months of mediation. Furthermore, a 2012 Foundation survey found that disputants assigned an average value of 8.74/10 to the statement 'community mediation builds inter-personal harmony' and 8.65/10 to 'relationships between disputants have been improved after the resolution of the dispute'. Though these changes occur on an interpersonal level, interviews with Foundation staff and partners often indicate that on aggregate, these changes are also expected to affect society more broadly.

Focus group discussions largely reinforce this evidence and often equate a scenario of improved relationships with one of wider social harmony. Reflecting on the changes following the establishment of community mediation, one mediator in Nawalparasi district notes, 'before [community mediation] relations weren't improved. Now we have a win-win situation with mediation and they are improved because of that...now neither party is forced to be defeated'.¹²⁸ Consistent with this aim, disputants repeatedly identify preserving relationships to be the most significant benefit of mediation, citing that the service had eliminated feuds between neighbours and siblings and prevented many divorces. One municipality official in Kailali district confirmed this point by explaining simply, 'our community is harmonious due to improved relationships'.¹²⁹

Though these results indicate mediation's ability to build interpersonal relationships between disputants, more information is necessary to understand the nature of these relationships. Community life in Nepal includes celebrating festivals, doing business and assisting each other with farming or other productive tasks. As such, investigating if former opposing disputants engage in these activities may indicate the extent to which their relationships have been repaired. Tracking disputant relationships beyond three months, though potentially difficult operationally, will also allow for a more complete picture of community mediation's relational impact at the interpersonal level.

Evidence Discussion: Inter-group Relationships

¹²⁵ Pavlich (1996:707)

¹²⁶ Mulcahy (2000), cited in Li-on, L. (2000). The Politics of Community Mediation: A Study of Community Mediation in Israel. *Conflict Resolution Quarterly*, 26(4), pp.453-479.

¹²⁷ Putnam, R. (1993). *Making Democracy Work: Civic Tradition in Modern Italy*. Princeton, NJ: Princeton University Press; Li-on, L. (2009). 'The Politics of Community Mediation: A Study of Community Mediation in Israel'. *Conflict Resolution Quarterly*, 26(4), pp.453-479.

¹²⁸ #24 interview with male mediator, Nawalparasi district

¹²⁹ #62 interview with member of Dhanghadi municipality

As Nepal's communities tend to be extremely diverse, cleavages between ethnic, caste and political groups in Nepalese society are often factors in disputes. With this in mind, community mediation's Theory of Change also highlights building relationships between members of groups with such historic tensions. Doing so, it is argued, will promote social harmony by increasing cooperation and trust. This approach is consistent with theories of social capital, which find that forming such 'bridging' relationships between groups promotes cooperative norms.¹³⁰ This perspective finds such relationships to be particularly important to cohesion in diverse communities, in contrast to bonding relationships within groups, which are largely considered detrimental.¹³¹

However, evidence to support community mediation's ability to build inter-group relationships is mixed. Foundation reporting is promising, finding that disputants assign an average of 8.5/10 for 'community mediation builds relationships between/among different groups'. However, a Foundation study conducted between 2007 and 2010 found that such inter-group, bridging relationships formed primarily among mediators - a point confirmed in primary research.¹³² Given that these relationships depend on repeated interaction, this fact may be a result of the extended amount of time mediators must spend together, both in training and working.

Additionally, many mediators also noted changing their opinions and pre-existing biases of other groups as a result of such relationships. One man in Kailali district recounts how becoming mediators helped him and member of a rival political movement mend their relationship:

The reason that our dispute got resolved was because we had trained together as mediators. Once we got the training we saw that no party gains anything through a dispute, its only loss. We came to see the views of the other perspective, and knew that fighting would have sent the wrong impression.¹³³

While building bridging relationships primarily among mediators may be a small way of building inter-group relationships, this nevertheless indicates a benefit from mediation. Indeed, it indicates that establishing a *system* of community mediation based on the Foundation model may itself help build interpersonal relationships across groups, even when there may be less evidence for the ability of the mediation process to establish such relationships on a group basis.

It is plausible that mediation may also build bridging relationships by handling disputes based on ethnic, caste or political party affiliation. As mediation has only recently begun to see group disputes, such, inter-group bridging relationships must largely occur on the individual level, as individuals act as representatives in disputes with caste, ethnic or political dimensions. Foundation reporting suggests that though disputants often value the opportunity to choose mediators similar to themselves, disputants may also often choose mediators from differing caste, class and ethnic backgrounds, which may establish a bridging relationship. Mediators and implementing partners suggest that these relationships affect the broader

¹³⁰ Putnam (1993) cited in Leonard, M. (2004). 'Bonding and Bridging Social Capital: Reflections from Belfast'. *Sociology* 38(5): pp.927-944.

¹³¹ Leonard (2004)

¹³² TAF (2012)

¹³³ Interview #3 with male mediator, Kailali district

community by demonstrating the ability of individuals from differing groups to cooperate. These dynamics may also continue at the group level as disputants share experiences and information about the other groups with their families and community. One mediation trainer from Kanchanpur district described this process,

Things also change from the impressions after disputes are settled. If there is a Tharu-Hilly dispute that comes to a mediation session and they agree, they go back to their communities and tell about what they learned and we should have these kinds of feelings toward this community. But in other mechanisms the enmity remains.¹³⁴

Mediators in all districts cited political party, caste and ethnic affiliation as the root causes of disputes in their communities, highlighting the potential for mediation to form bridging relationships between disputants belonging to these groups. However, there was also no consensus among mediators as to the role of these issues in disputes brought to mediation. In Nawalparasi district, this was especially true in relation to political interests and divisions: some mediators argued that political party affiliation plays no role in disputes brought to mediation, whereas others believe such affiliation - particularly between disputants of differing political parties - significantly exacerbates disputes and complicates the dispute resolution process. Given that the Foundation does not systematically document the proportion of disputes seen by mediation based on political, ethnic or caste-based issues, more information regarding these disputes and their impact on community perceptions is necessary to fully substantiate mediation's ability to promote bridging relationships, as is further study of how individual behaviour and learning may affect the broader community.¹³⁵

Limitations and Conclusion

Compared to resolving disputes, improving relationships constitutes a broader understanding of social harmony. However, when considering social harmony in this way it is important to interrogate the nature of the relationships in question, the power dynamics between disputants and what it means to 'improve' them. Li-On finds differing views of the role of community mediation in relationships in diverse communities: majority groups saw mediation as a tool to smooth social rifts, whereas minority groups viewed it as a vehicle for empowerment.¹³⁶ This tension between group harmony and individual empowerment suggests that individuals with differing levels of power – identified as capability, connections, resources, and otherwise – may understand improving relationships in contradictory ways. Davidheiser reaffirms this observation, noting that to 'fulfil this 'promise of mediation' it will be necessary to take into account the problem of power and inequality'.¹³⁷ This point is relevant for mediation of both interpersonal and inter-group relationships, which must contend with and attempt to transcend inherent asymmetries of power. This suggests that 'improving' relationships may mean different things to different people, and may not necessarily lead social harmony.

¹³⁴ Interview #42 with male mediation trainer, Kanchanpur district (conducted in Dhanghadi, Kailali district)

¹³⁵ Although the caste and ethnicity of disputant pairs is not currently considered in programme monitoring and evaluation, the names of disputants are recorded. From these names, it is generally possible to ascertain and ethnicity of an individual. As such, analysis of existing records may make it possible to learn more about inter-caste and inter-ethnic bridging relationships in mediation.

¹³⁶ Li-On (2000)

¹³⁷ Davidheiser (2006:294)

The above section has shown strong evidence of community mediation's ability to build to interpersonal relationships, but mixed evidence related to inter-group relationships. There are positive indications that resolving disputes based on caste, political or ethnic divisions has the potential to deal with many of the most pressing issues in Nepalese society, but the extent to which mediation deals with such disputes is not currently documented. Solving such disputes may also build bridging relationships, yet systematic evidence for this occurring is currently lacking.

Inclusion and Empowerment

Much discussion of social harmony in academic and practitioner circles also centres around inclusion and empowerment. Within this more expansive understanding of social harmony, Li and Chui specifically identify social exclusion as 'counter-productive to social harmony'.¹³⁸ This is particularly appropriate in Nepal, where a history of social stratification and enduring marginalisation of women, ethno-linguistic minorities and lower-castes is often cited as a factor in the country's recent conflict and current political crises.¹³⁹ The term 'social harmony' has also been used to describe to social inclusion and enhanced minority cultural identity in Nepal.¹⁴⁰ Additionally, a 2013 'social harmony debate' held by one ethnic minority foundation in Nepal framed 'social harmony' as intrinsically connected to promoting inclusion and minority rights.¹⁴¹

Consistent with these understandings, the Foundation's Theory of Change for community mediation identifies inclusion as a cornerstone of the programme: '[community mediation is] a locally-owned programme that reflects the demographic make-up of the community...[mediation] will increase community members' perception and behaviour in reference to respect, inclusion and participation'.¹⁴² In line with this theory, programme staff and mediators often connect inclusion of marginalised groups with empowerment and frame this process as a way to foster social harmony. Programme staff and mediators also commonly discuss such empowerment in terms of social justice and suggest that empowering members of marginalised groups can ameliorate the inequalities plaguing much of Nepalese political, economic and social life.¹⁴³

¹³⁸ Li, Y. and Chui, E.W.T. (2011). 'China's Policy on Rural-urban Migrants and Urban Social Harmony'. *Asian Social Science* 7(7) p12.

¹³⁹ Glazer, A. (2005). Social Exclusion and Conflict Transformation in Nepal: Women, Dalit and Ethnic Groups: FAST Country Risk Profile, Nepal. Swiss Peace working paper, available at: <http://isn.ch/isn/Digital-Library/Publications/Detail/?ord516=OrgaGrp&ots591=0c54e3b3-1e9c-be1e-2c24a6a8c7060233&lng=en&id=1464>

¹⁴⁰ In Bibliography, see Organisation information for Center for International Studies and Cooperation and Backward Society Education

¹⁴¹ (2013, January 11). 'End inequality to maintain harmony: Social scientists'. *The Himalayan Times*. Available at <http://thehimalayantimes.com/fullTodays.php?headline=End+inequality+to+maintain+harmony%3A+Social+scientists&NewsID=361779>.

¹⁴² TAF (2012a:17)

¹⁴³ According to TAF (2012a), members of marginalised groups compose and average of 40% of mediators. See Barach Bush and Folger (1994:85-7), quoted in Bigdon C. and Korf B. (2004) *The Role of Development Aid in Conflict Transformation: Facilitating Empowerment Processes and Community Building*. Berghof Centre for Constructive Conflict Management, p.10. Available at http://portals.wi.wur.nl/files/docs/ppme/bigdon_korf_handbook.pdf

This emphasis on empowerment is also consistent with mediation theory. Hedeon and Coy frame mediation as a way to empower marginalised individuals by allowing them to ‘take back control over their lives’ from dominant ‘oppressive’ and ‘unfair’ institutions.¹⁴⁴ Additionally, Li-On highlights that empowerment is a central goal for community mediation and a ‘symbolic resource’ for mediation proponents.¹⁴⁵ These understandings are based on empowering the individual, though are often implied to have a collective effect in the community.

Evidence Discussion: Empowering Individuals

The most significant empowerment resulting from mediation appears to occur among mediators from marginalised groups. Empowerment theory suggests that mediation’s practice of training these individuals with the ‘skills and confidence necessary to exercise power’ and placing them in socially prominent positions supports this aim. In interviews across Nepal, mediators repeatedly expressed feeling ‘powerless’ and ‘invisible’ prior to becoming mediators and more respected by their families and surrounding communities after they began resolving disputes.¹⁴⁶ As one female mediator in Kailali district noted, ‘before I was a mediator, I went to a judge and he ignored me. Later, when I introduced myself as a mediator, I got respect from him’.¹⁴⁷ Such accounts are consistent with a 2012 external evaluation that found that individuals from marginalised groups reported increased self-esteem after serving as mediators.¹⁴⁸ In focus group discussions in Kailali district, mediators indicate that this empowerment extends to other areas of their lives, leading them to become more engaged socially and civically and to pursue education.¹⁴⁹

Primary research reflected consistent claims that including individuals from marginalised groups as mediators also empowered disputants of these groups. In interviews across Nepal, female and Dalit disputants repeatedly noted the importance of being able to select someone like themselves as a mediator.¹⁵⁰ One mediator in Nawalparasi district framed this choice in terms of empowerment:

Community mediation has been able to empower women, especially in the Terai where they have issues with their in-laws and need someone like them to talk to. In community mediation, they’re able to come face to face with their fathers-in-law and speak directly. These women mediators teach them that they can do something (about their disputes).¹⁵¹

¹⁴⁴ Hedeon and Coy 2000, quoted in Hedeon, T. (2004). ‘The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress’. *Conflict Resolution Quarterly*, 22(1), pp.101-134.

¹⁴⁵ Li-On (2000); Shonholtz, R. (1984). ‘Neighbourhood Justice Systems: Work, Structure, and Guiding Principles’. *Mediation Quarterly*, 5, pp.3-30.; Bachrach, P., and Botwinick, A. (1992). *Power and Empowerment: A Radical Theory of Participatory Democracy*. Philadelphia: Temple University Press.

¹⁴⁶ #35, interview with male mediator, Kailali district; #12 mixed gender focus group with mediators, #13 – mixed gender focus group of trainers, both in Dhanusha district; #25 interview with female mediator, Nawalparasi district, and #54 interview with TAF staff, Kathmandu also confirmed this.

¹⁴⁷ #35 interview with female mediator, Kailali district

¹⁴⁸ Coral Associates 2012 PPA Evaluation - commissioned by TAF for DFID, document on file with author.

¹⁴⁹ Interview #58, focus group with mediators, Kailali district

¹⁵⁰ #13 focus group with trainers, Dhanusha district; #25 interview with female mediator, Nawalparasi district; interview #27 interview with female disputant, Chitwan district; #43 interview with female mediator and #45 focus group discussion with disputants, both in Kanchanpur district

¹⁵¹ #24 interview with male mediator Nawalparasi district

Disputants often noted that electing someone like themselves to be their mediator made them feel that these individuals understood their circumstances. These same disputants also suggested that this choice also made them more comfortable with the mediation process and more confident that they would get a fair outcome. Such factors may not only empower disputants within the mediation process, but also have implications for mediation's ability to increase access to justice among members of marginalised groups. As these experiences are not systematically documented in Foundation reporting, exploring the experiences of mediators and disputants of marginalised groups before and after participating mediation is necessary to confirm these changes.

Evidence Discussion: Changing Social Norms

Though the possibility of empowering mediators and disputants is positive in its own right, the question of how this change affects the broader community is largely unanswered. Promoting empowerment and social inclusion at the community level would mean altering the social norms that define the boundaries of acceptable behaviour.¹⁵² While even mediation proponents are sceptical of mediation's ability to affect social norms through their decisions, less attention is paid to how the programme design and training may affect them.¹⁵³

In terms of programme design, it is plausible that including members of marginalised groups as mediators may affect social norms. De Voe and Larkin find that the presence of female mediators in Nepalese communities reduced men's prejudice against women and changed men's perceptions of women's social roles.¹⁵⁴ Though the authors do not indicate what evidence substantiates this finding, focus group discussions in Kailali district reflected similar dynamics: the presence of effective, professional female and Dalit mediators seemed to improve how the surrounding community perceived these groups.¹⁵⁵ These observations have important implications for current understandings of social harmony. However, more evidence regarding changes in how dominant groups perceive marginalised groups in locations with and without mediation is necessary to support these potentially significant claims.

It is plausible that the Foundation's intensive mediator training may also impact the broader community and social norms.¹⁵⁶ A recent study by Blattman et al. finds increased empathy, self-reflection and willingness to engage in dialogue among individuals who received even limited training in alternative dispute resolution.¹⁵⁷ These changes, it is argued, may establish norms of respect and equal treatment that begin with mediators but filter out to the wider community. This finding is largely consistent with many interviews with mediators conducted

¹⁵² Elster, J. (1989). *The Cement of Society*. Cambridge: Cambridge University Press.

¹⁵³ Neves, T. (2009:142). Practice Note: Community Mediation as Social Intervention. *Conflict Resolution Quarterly*, 26(4), pp.481-495.; Brown, S. Cervenak, C. and Fairman, D. (1997). *Alternative Dispute Resolution Practitioner's Guide*. Center for Democracy and Governance, prepared for USAID. Available at, http://transition.usaid.gov/ourwork/democracy_and_governance/publications/pdfs/pnacb895.pdf.; Cohen (2006).

¹⁵⁴ De Voe, P., and Larkin, C. J. (2005). Community Mediation as a Tool for Addressing Social Exclusion in Nepal. Critical Half.; The programmes studied in this work are sponsored by the Center for the Victims of Torture, Kathmandu School of Law, and Mainstreaming Gender Equality Programme.

¹⁵⁵ #64 interview with male trainer, Kalali district

¹⁵⁶ See details of mediator training process and material development in TAF guidelines.

¹⁵⁷ Blattman et al. (2012)

for this study, who report that the mediation trainings significantly changed how they treated disputants. As one mediator for Dadelh dhura district noted:

I used to settle disputes before, but I feel that with training, the way I now settle disputes is different from this. Previously we would exert a kind of force and eventually would have taken sides. We address people with respect, this impacts people other than disputants. The people now look at us with hope and try to imitate what we do.¹⁵⁸

Mediators also report that their training enabled them to separate themselves from political biases when facilitating decisions, which too may establish norms of fairness in the community. Though these experiences indicate that training and education may have a wider impact on social norms, Ross cautions against this, highlighting that such changes are known to require long periods of time and can be hampered by the ‘problems that people in emotionally charged situations have in transferring learning across social settings’.¹⁵⁹ Given that no systematic evidence currently exists to support this claim, exploring how mediator and disputant behavior change can affect community perceptions and behavior will be essential to substantiating this component of the Theory of Change.

Limitations and Conclusion

The above discussion has shown that approaching social harmony from the perspective of empowerment and social inclusion is a more expansive way to understand this concept than simply resolving disputes and repairing relationships, and is consistent with mediation theory. In conjunction with these observations, however, mediation exists within and not separate from communities with established value systems and power structures. Though empowering marginalised groups in these communities serves an ultimate good, doing so may also threaten prevailing social relationships. For example, empowerment interventions elsewhere reported a backlash against women by their male counter-parts after taking on new, traditionally male roles in the community.¹⁶⁰ Specifically considering justice interventions, Shrestha notes that local power holders, including middlemen whose livelihoods depend on enduring disputes, may also be threatened by mediation.¹⁶¹ Given that these changes in local power structures invite the possibility of conflict, tension and social disharmony,¹⁶² further investigating the position of mediators vis-à-vis established power holders is necessary to fully understand how mediation, and specifically its empowerment component, may function in such contexts.

In addition to these considerations, there remain gaps in information needed to connect this understanding of social harmony to community mediation. On the individual level, including members of marginalised groups as mediators has empowered both disputants as well as the

¹⁵⁸ #37 focus group discussion with male mediators, Dadelh dhura district

¹⁵⁹ Ross, M. H. (2000). ‘Creating the conditions for peacemaking: Theories of practice in ethnic conflict resolution’. *Ethnic and Racial Studies* 23(6), p1007.

¹⁶⁰ For example, see Cheston, S. and Kuhn, L. (n.d.). ‘Empowering Women through Microfinance’. Prepared for UNIFEM. Available at, <http://www.microcreditsummit.org/papers/empowerment.pdf>.

¹⁶¹ These ‘bokahas’ are often paid to take cases to court and to find ways, legal or illegal, to push the case through faster. Given that their livelihoods depend on the existence of disputes, they are generally seen as catalysts of conflict. See also Shrestha (2006).

¹⁶² This concern was also articulated by a senior Nepali academic, #17 interview, Kathmandu.

mediators themselves. Collectively, training mediators to respect and empower members of marginalised groups may also challenge exclusionary community norms built on cumulative, individual interactions. Contributing to such changes constitutes an expansive understanding of social harmony, however more information is needed to clarify the relationship between individual-level and community-level change.

Revisiting Nepal's Justice Context

The previous section has identified a number of overlapping understandings of social harmony and assessed the evidence connecting them to community mediation. Though this evidence showed substantial strengths and weaknesses, community mediation's ability to contribute to social harmony is perhaps most apparent when considered against the backdrop of Nepal's formal and traditional justice systems. Indeed, a majority of respondents compared mediation favourably to Nepal's courts and police, as well as to its informal justice bodies. This is consistent with mediation theory, which views the shortcomings of existing justice mechanisms as the primary contextual justification for community mediation. Based on primary research, this section will briefly evaluate the perceived shortcomings of these systems in contributing to each understanding of social harmony outlined in this paper.

Firstly, respondents overwhelmingly noted that Nepal's formal justice system is an arena where disputes and animosities become entrenched and often escalate. Consistent with academic appraisals, respondents often refer to courts as 'revenge generating institutions'.¹⁶³ Similarly, respondents repeatedly suggested that traditional practices of publicly resolving disputes invite communal involvement.¹⁶⁴ This presents an opportunity for disputes to escalate as community members interfere and the community as a whole factionalises along family, caste, ethnic, political lines. One disputant in Nawalparasi describes this dynamic: 'if disputes have to get resolved in the open, this will create protagonist and antagonist parties that align themselves with the disputants - people will take sides and can often change sides – this makes things worse'.¹⁶⁵ In these contexts, disputants often seek the support of local power holders or political parties to help sway their case with both formal and traditional justice systems. This behaviour creates space for factionalism and patron-client groups, the involvement of which may reduce the likelihood of resolving disputes and may cause them to further escalate. Further research on local patron-client networks and how they may connect with community mediation is needed to fully contrast mediation with Nepal's formal justice system, however preliminary research highlights these as particularly detrimental to Nepal's formal justice system.

Secondly, these adversarial dynamics suggest that the arenas of formal and traditional dispute resolution may not be conducive to relationship building. Focus group discussions commonly reported that these formal justice mechanisms establish negative norms in relationships, including feelings of revenge and negativity and victim-victor mentalities. According to one

¹⁶³ Sangroula (1996)

¹⁶⁴ #21 interview with male public official and #26 interview with male public official, both in Nawalparasi district; #56 focus group discussion with mediators, #57 interview with male mediator, #60 interview with female mediator; #61 focus group discussion with female mediators, #63 interview with male mediator, all in Kailali district

¹⁶⁵ #22 interview with female disputant, Nawalparasi district

police officer in Nawalparasi, ‘Even in small issues people have the need to win. They use the courts to make others suffer. Community mediation doesn't allow this’.¹⁶⁶ The adversarial nature of other justice mechanisms suggests that intergroup relationships would also not have been improved in those arenas. The fact that formal justice providers tend to be men of high castes further suggests that these arenas do not provide opportunities to establish inter-group, bridging relationships.

Thirdly, Nepal’s formal and traditional justice systems do not appear to empower individuals of marginalised groups. These systems rest largely on the inherent power of each party involved, as attempts to sway the outcome of cases through personal relationships, gifts and favours reportedly common.¹⁶⁷ Interviews reflect that these practices are disempowering to disputants, especially members of marginalised communities who may have less access to such resources. As one mediator noted, ‘in the village, the way things were settled traditionally would allow the powerful voice to prevail. This is the same with the police and in the courts -- law is sold here. But here in community mediation those that don’t speak are empowered to do so’.¹⁶⁸ This view of formal and traditional systems as fundamentally disempowering suggests that mediation may empower disputant and mediators of marginalised groups in ways that would likely not occur in other justice mechanisms.

The above observations can be taken as a counterfactual, indicative form of evidence. Though more research is needed to fully substantiate these claims, respondent experiences from this study indicate that Nepal’s formal justice system may be unlikely to promote any understanding of social harmony identified in this paper. Traditional justice mechanisms vary widely, but respondents suggest that overall these too may also not support any such understandings of social harmony. Comparing mediation with these forms of justice provides an additional avenue through which to explore potential impacts of community mediation, its contribution to social harmony, and may help further refine the Theory of Change.

6. Moving Forward: Refining the Theory of Change

This paper has analysed Foundation-supported community mediation in Nepal and its connection to social harmony. Though this connection represents a high-level, long-term goal, it also provides a starting point through which to explore the programme’s wider effects. This research has attempted to refine the Theory of Change by accounting for a variety of understandings of social harmony. These understandings range from dispute resolution and prevention to relationship building and empowerment, and are consistent with ways that Foundation staff, partners and academics understand social harmony. As such, they are useful in clarifying the meaning of social harmony and may serve as useful indicators through which to monitor the impact of this programme going forward. This research has also outlined a number of intended and unintended changes resulting from community mediation that may contribute to social harmony, many of which have yet to be theorised by the Foundation. From this analysis, four issues emerge as critical to further refining this Theory of Change and its use more broadly.

¹⁶⁶ #21 interview with male police official, Nawalparasi district

¹⁶⁷ Upreti (2004a)

¹⁶⁸ #24 interview with male mediator, Nawalparasi district

Firstly, this paper has found that though ‘social harmony’ is a commonly-used term in development practice and academia, it is often used without clear meaning. In an effort to clarify the concept with reference to mediation, this paper has considered the broader evidence supporting a number of potential understandings of ‘social harmony’. Though these definitions provide a basis for operationalising social harmony, there is also tension between them in mediation – most crucially between justice and harmony. These tensions are well explored global mediation practice, and have also been specifically identified in Foundation-supported mediation in Nepal.¹⁶⁹ Given the wider use of ‘social harmony’ in reference to Nepal and mediation, further linking the meaning of the term with programme design and target communities, exploring new ways to transcend these tensions and identifying indicators of success will allow for the refinement of Theories of Change in community mediation and the other programmes that employ this concept.

Secondly, understanding how individual-level interventions may affect community-level outcomes is central to this research. This paper has shown that Foundation-supported mediation may indirectly contribute to community-level change through individual-level intervention. To accomplish this, individuals impart conflict resolution skills to others, share experiences of mediation and model behaviour in the wider community. Respondents also noted that building dispute resolution skills among leaders and training police, politicians, civil servants and traditional leaders may further affect community-level change. Given that social harmony is largely a community-level effect, documenting these pathways of change and adjusting programming targets accordingly will allow for further refinement of the Theory of Change underpinning community mediation.

Thirdly, the institutional context surrounding community mediation has significant implications for its Theory of Change. Although this paper has shown that mediation is generally compared positively to formal and traditional justice structures in Nepal, it remains to be seen if mediation addresses or reinforces inequalities ‘embedded in social norms’ governing Nepal’s traditional and formal systems.¹⁷⁰ Mediation’s current Theory of Change relies on individual, trained mediators to take account of these norms and act apolitically in facilitating dispute resolution at the household level. It is unclear, however, how mediators can consistently adhere to these standards in contributing to community-level outcomes. Incorporating a periodic review to gain understanding of community-level biases, faults and conflicting pressures that mediators face will allow for further refinement of the Theory of Change.

Finally, this paper has not attempted to prove a causal link between social harmony and community mediation. Rather, it has evaluated the logic and available evidence for each understanding of the term and highlighted opportunities to further substantiate the Theory of Change. Among these opportunities, increased tracking of agreement implementation and learning about disputant relationships over time would provide essential information about the longitudinal impact of mediation at the individual level. Comparing dispute profiles and intensity, along with attitudes toward conflict in VDCs with and without community mediation would also provide insight into the broader effects of the programme. Additionally, enhanced engagement with the broader communities that mediation aims to support will be important to substantiating the programme’s community-level claims. These

¹⁶⁹ Davidheiser (2006); Lederach and Thapa (2012)

¹⁷⁰ These social norms could include discrimination against women, members of lower castes and ethnic minorities, or other marginalised individuals, see Cohen (2006:305).

research avenues would also allow the Foundation to account for many factors affecting communities in Nepal and further refine its Theory of Change.

This paper represents a first step in examining how Theory of Change is used in development practice. In this examination, it has identified strengths and weaknesses of both the Theory of Change approach, as well as a specific claim connecting community mediation with social harmony. In both cases, such strengths represent an enhanced effort to examine and learn about change processes and their surrounding context, whereas weaknesses represent gaps in evidence and a tendency to privilege high-level goals. Though highlighted in the context of Foundation-supported community mediation, these issues are emblematic of the larger struggle within many organisations to use the Theory of Change approach in a meaningful and realistic way. This paper has attempted to leverage these strengths and counter-act these weaknesses by identifying ways to better understand community mediation and ground the claims of its Theory of Change. Continuing to do so will be critical to both the development of Theory of Change best practice and, in the case of community mediation, will allow the Foundation to further articulate, explore and assess the impacts of this programme going forward.

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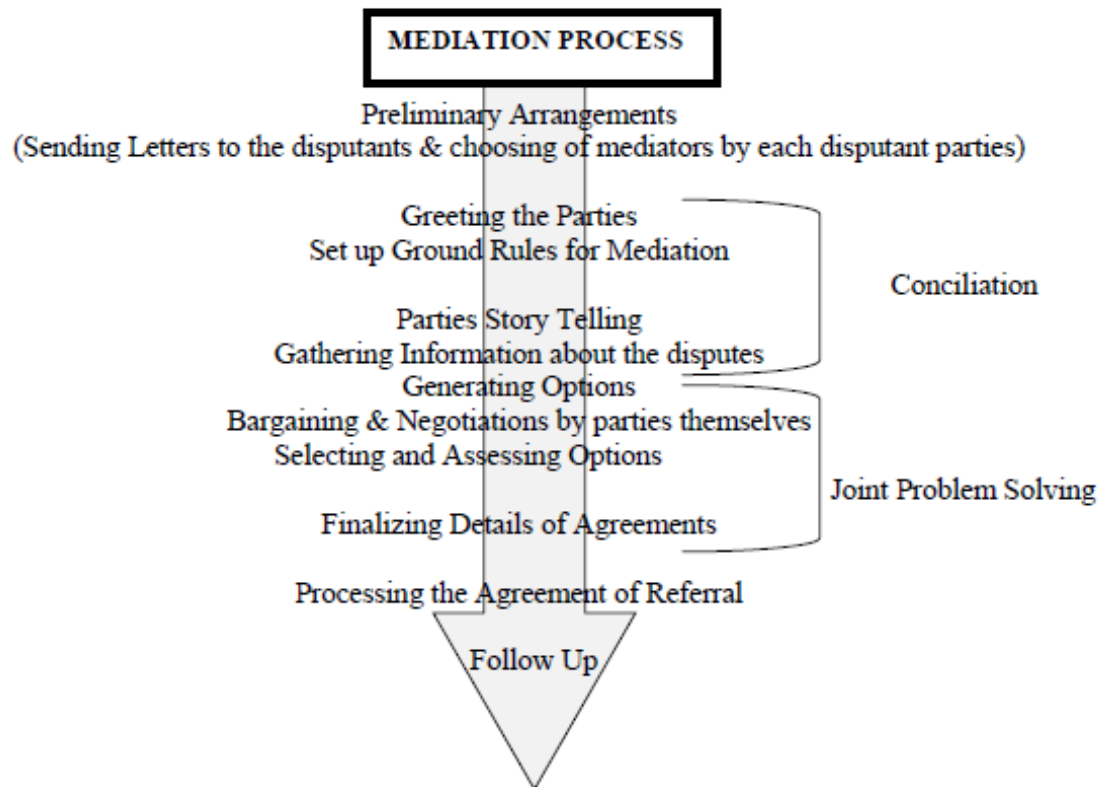
Annex I: Breakdown of Primary Research

Breakdown of Respondents (interviews and focus group discussions)				
Cohort	Total Hours	Total People	Male	Female
Mediators	24.34	70	45	25
Disputants	7.42	28	18	10
Trainers	4.91	14	11	3
Advisory Board Members	1.5	3	3	0
Local Officials	6.83	9	9	0
Total	45	124	86	38

Primary Research Locations		
District	VDC	Hours of Interaction
Chitwan	Bharatpur (Municipality)	0.5
	Gitanagar	5
Dadeldhura	Ashigram	2.5
	Ganeshpur	1.25
Dhanusha	Janakpur (Municipality)	3.25
Kailali	Dhanghadi (Municipality)	3.1
	Beladevipur	0.5
	Geta	1.3
	Phulwari	5.1
	Urma	1.25
Kanchanpur	Mahendranagar (Municipality)	4
	Daijee	3
	Krishnapur	1.3
Nawalparasi	Shivamandir	3.4
	Panchanagar	3.75

Kathmandu Respondents	
Affiliation	Hours of Interaction
The Asia Foundation Staff	4.83
Implementing Partner Staff	7
Local Experts and Academics	3.55

Annex II: Diagram of Mediation Process



From: Bush, R. and J. Folger. (1994). *The Promise of Mediation*, San Francisco: Jossey Bass Publishers, p.16. Cited in Shah and Thapa (2009:12).



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